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and ABBOTT LABORATORIES

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ABBOTT DIABETES CARE INC. and  
ABBOTT LABORATORIES,

Plaintiffs,

vs.

ROCHE DIAGNOSTICS CORPORATION  
and BAYER HEALTHCARE LLC

Defendants.

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**CASE NO. C05-3117 MJJ**

**DECLARATION OF SHANNON H.  
HUTCHESON IN SUPPORT OF  
ABBOTT'S OPPOSITION TO  
DEFENDANTS ROCHE'S AND BAYER'S  
JOINT MOTION FOR SUMMARY  
JUDGMENT OF INVALIDITY, AND  
DEFENDANTS BECTON DICKINSON &  
CO.'S AND NOVA BIOMEDICAL'S  
JOINDER THERETO**

**CONTAINS CONFIDENTIAL  
INFORMATION; FILED UNDER SEAL  
PURSUANT TO PROTECTIVE ORDER**

1 AND

2  
3 THERASENSE, INC., and ABBOTT  
4 LABORATORIES,

5 Plaintiffs,

6 vs.

7 NOVA BIOMEDICAL CORP.,

8 Defendant.

9  
10 AND RELATED CASES

**CASE NO. C04-2123 MJJ**  
**CASE NO. C04-3327 MJJ**  
**CASE NO. C04-3732 MJJ**

11 I, Shannon Hutcheson, declare as follows:

12 1. I am an attorney with the law firm of Baker Botts LLP, counsel for Plaintiffs,  
13 Abbott Diabetes Care Inc. and Abbott Laboratories (collectively, "Abbott"), in this case.

14 2. I make this declaration based on personal knowledge and could testify competently  
15 to the facts stated herein. I make this declaration in support of Abbott's Opposition of Defendants  
16 Roche's and Bayer's Joint Motion for Summary Judgment of Invalidity, and Defendants BD and  
17 Nova's Joinder thereto.  
18

19 3. Attached hereto as Exhibit 1 is a true and correct copy of the Validity Expert  
20 Report of Dr. Allen J. Bard dated October 5, 2007.  
21

22 4. Attached hereto as Exhibit 2 is a true and correct copy of U.S. Patent Number  
23 '6,592,745.

24 5. Attached hereto as Exhibit 3 are true and correct excerpts from the Deposition of  
25 Steven Weber dated October 11, 2007.

26 6. Attached hereto as Exhibit 4 is a true and correct copy of the Infringement Expert  
27 Report of Dr. Allen J. Bard dated September 12, 2007, and Exhibits 5, 6 and 7 thereto.  
28

1 Plaintiff's Deposition Exhibit 97.

2 7. Attached hereto as Exhibit 5 are true and correct excerpts from the Deposition of  
3 Allen J. Bard dated October 18-20, 2007.

4 8. Attached hereto as Exhibit 6 is a true and correct copy of the Infringement Expert  
5 Report of Steven Weber dated Plaintiff's October 5, 2007.  
6

7 9. Attached hereto as Exhibit 7 are true and correct excerpts from the Deposition of  
8 William Durgin dated October 16, 2007.

9 10. Attached hereto as Exhibit 8 are true and correct excerpts from the Deposition of  
10 Joseph Stetter dated October 30, 2007.

11 11. Attached hereto as Exhibit 9 are true and correct excerpts from the Deposition of  
12 James McCann dated July 19, 2007.

13 12. Exhibit 10 was omitted.  
14

15 13. Attached hereto as Exhibit 11 is a true and correct copy of the webpage of  
16 Cambridge Sensors Limited, at <http://www.cs-limited.co.uk/4709/index.html> (last viewed of  
17 November 6, 2007).

18 14. Attached hereto as Exhibit 12 is a true and correct copy of a May 11, 1998 letter  
19 from James McCann to Kenneth Weissnar, which was produced in this case by Bayer bearing  
20 bates numbers BAYER03999021-4.

21 15. Attached hereto as Exhibit 13 is a true and correct copy of a May 29, 1998 letter  
22 from James McCann to Margrete Goksoyr, which was produced in this case by Bayer bearing  
23 bates numbers BAYER0400779-88.  
24  
25  
26  
27  
28

1           16.     Attached hereto as Exhibit 14 is a true and correct copy of a September 16, 1998  
2 letter from James McCann to Joseph Plevelich, which was produced in this case by Bayer bearing  
3 bates numbers BAYER0399090-91.

4           17.     Attached hereto as Exhibit 15 is a true and correct copy of the Validity Expert  
5 Report of Anthony Turner dated September 12, 2007, and Exhibits C and D thereto.

6           18.     Attached hereto as Exhibit 16 are true and correct excerpts from the Deposition of  
7 Anthony Turner dated October 24-25, 2007.

8           19.     Attached hereto as Exhibit 17 are true and correct excerpts from the Deposition of  
9 Neil Blair dated July 20, 2007.

10          20.     Attached hereto as Exhibit 18 is a true and correct copy of the document produced  
11 in this litigation bearing bates labels TH0042821-44.

12          21.     Attached hereto as Exhibit 19 is a true and correct copy of the Cambridge Sensors  
13 Limited International Patent Application (WO 98/55856 (1988)) produced by Bayer in this case  
14 bearing bates numbers BAYER0402605-622.

15          22.     Attached hereto as Exhibit 20 is a true and correct copy of the WO98/35225 by  
16 Heller et al.

17          23.     Attached hereto as Exhibit 21 is a true and correct copy of U.S. Patent No.  
18 6,120,676.

19          24.     Attached hereto as Exhibit 22 is a true and correct copy of U.S. Patent No.  
20 6,143,164.

21          25.     Attached hereto as Exhibit 23 are true and correct excerpts from the Deposition of  
22 Xiaohua Cai dated August 15, 2007.

23          26.     Attached hereto as Exhibit 24 are true and correct excerpts from the Deposition of  
24 Steve Diamond dated August 24, 2007.

1  
2 27. Attached hereto as Exhibit 25 are true and correct excerpts from the Deposition of  
3 Bern Harrison dated May 23, 2007.

4 28. Attached hereto as Exhibit 26 are true and correct excerpts from the Deposition of  
5 Amy Goldy dated May 23, 2007.

6 29. Attached hereto as Exhibit 27 are true and correct excerpts from the Deposition of  
7 Irving John Higgins dated July 18, 2007.

8 30. Attached hereto as Exhibit 28 are true and correct excerpts from the Deposition of  
9 Nigel Surridge dated May 24 and August 3, 2007.

10 31. Attached hereto as Exhibit 29 are true and correct excerpts from the Deposition of  
11 Mark Vreeke dated August 10, 2007.

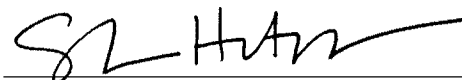
12 32. Attached hereto as Exhibit 30 are true and correct excerpts from the Deposition of  
13 Handani Winwarta dated July 16, 2007.

14 33. Attached hereto as Exhibit 31 is a true and correct copy of the Ascencia Microfill  
15 Test Strip manual, bates numbered TH0052271-2.

16 26. Attached hereto as Exhibit 32 are true and correct copies of Defendants' Markman  
17 Slides Set 3.

18 I declare under penalty of perjury under the laws of the State of California that the  
19 foregoing is true and correct.

20 Signed this 14th day of November, 2007.

21  
22  
23  
24  
25 

26 Shannon H. Hutcheson